IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 142 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AMBALAL SARABHAI CHARITY TRUST

Appearance:
MR Akil Qureshi with Mr RP BHATT for Petitioner

Mr R. K.Patel with Mr.B./D.Karia for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 21/09/2000

ORAL JUDGEMENT

Per Dave, J.:-

At the instance of the revenue, following three questions have been referred for opinion of this court under the provisions of section 256 (1) of the Income tax Act,1961 (hereinafter referred to as `the Act'):

1. Whether it would be necessary that at least 20% of the voting power is exercisable by the assessee or by the persons referred to in sub clause (3) of section 13 of the Income tax Act, 1961 in view of explanation III to section 13 of the said Act?

2. Whether the shares held by charitable trust could be said to have been held by the assessee or the persons referred to in sub section (3) of section 13 of the said Act?

3. Whether the assessee was entitled to exemption of the dividend income amounting to Rs. 1,777/-?

We have heard Mr. Akil Qureshi for the revenue and Mr. R.K.Patel for the assessee. It has been submitted by the learned advocates that while deciding the case of the present assessee, reference was made with regard to a case of Sarabhai Foundation by the Income tax Appellate Tribunal .In the case of Sarabhai Foundation, Income tax reference Application No. 557 of 1980 was filed in this court and the said Reference Application was decided on 16.9.1993. At the time of hearing,the reference Application in case of the present assessee, the Tribunal had referred to Income tax Reference Application No.557 of 1980 decided by this Court and perhaps, through oversight, the judgment in the case of Sarabhai Foundation in ITR No.557 of 1980 was looked into and the questions which had been referred to in ITR No.557 of 1980 had been incorporated in the present Reference, with which we are not concerned. In view of the circumstances stated above, perhaps on account of some inadvertences, questions Nos. 1 and 2 have been incorporated in the present Reference.

In the circumstances stated above, we need not answer

questions Nos. 1 and 2 and the only question which is to be answered by us is question No.3.

It has been submitted by the learned advocates that question No.3 has been now concluded by a judgment delivered in the case of CIT vs. Insaniyat Trust, 173 ITR 248 which has been referred to by this court in ITR No.557 of 1980 decided on 16.9.1993. Learned advocates have fairly submitted that as the said question has been now decided , looking to the law laid down in the judgments referred to above, the amount of dividend received by the assessee, which is Rs. 1,777/- will have to be bifurcated into two parts.

A. The dividend, which was received by the assessee on the shares which were donated to the assessee and shares which were received by the assessee by way of bonus , the provisions of section 13 (2) (h) would not apply and, therefore, the said amount of dividend would be exempted from tax.

B. So far as shares which were purchased by the assessee are concerned, the dividend which the assessee had received thereon would be subject to tax as the said shares would be subject to the provisions of section 13 (2) (h) of the Act.

From the question which has been referred to this court, it is not clear as to how much dividend was received by the assessee on the shares which were donated to the assessee and the shares which were received by the assessee by way of bonus; moreover, it is also not clear as to what was the amount of dividend which the assessee had received on the shares which were purchased by the assessee.

In view of the fact that the details with regard to break-up of the dividend as mentioned above are not available to this court, we answer the question as under:

The dividend which was received by the assessee on the shares which were donated to the assessee and the shares which were received by way of bonus by the assessee, would be exempted as per provisions of the Act and the dividend which was received on the shares which were purchased by the assessee would be subject to the provisions of section 13 (2) (h) of the Act.

We thus answer the question as stated above and leave it to the Tribunal to ascertain the relevant facts and pass appropriate orders. Reference is accordingly disposed of

in view of the answer stated above with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave,J.)

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